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**Report of the Special Rapporteur on the situation of human rights in  
the Democratic People’s Republic of Korea\***

*Summary*

In the present report, the Special Rapporteur discusses accountability for crimes against humanity committed in the Democratic People’s Republic of Korea, aiming to bring to the attention of the Human Rights Council and the international community the urgent need to take decisive actions to bring justice and accountability for such crimes. The report also presents an overview of the impacts of the COVID-19 pandemic on the human rights of the people in the country. The Special Rapporteur stresses that a peaceful and principled end of the Korean War will generate the space and the conditions to further discuss denuclearization, human rights improvements, and access to the ground.

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\* The present report was submitted to the conference services after the deadline in order to reflect recent developments.

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## I. Introduction

1. This report seeks to highlight the importance of ensuring accountability for human rights violations in the Democratic People's Republic of Korea. It incorporates the views submitted to the Special Rapporteur by civil society organizations and by the former members of the commission of inquiry on human rights in the Democratic People's Republic of Korea. In this report, the Special Rapporteur aims to bring to the attention of the Human Rights Council, along with the report of the Office of the High Commissioner for Human Rights (OHCHR) to the Human Rights Council on promoting accountability in the Democratic People's Republic of Korea,<sup>1</sup> that the United Nations and the international community have to take decisive actions to bring justice and accountability for serious human rights violations, including crimes against humanity, committed in the Democratic People's Republic of Korea. As a former Special Rapporteur on the situation of human rights in Myanmar<sup>2</sup>, the Special Rapporteur has witnessed the consequences when the most serious human rights abuses are forgotten and not properly addressed, despite noble intentions. The Special Rapporteur recognizes the difficulty in finding solutions to entrenched human rights problems in complex circumstances. However, human rights is axiological - not only victims but also perpetrators are entitled to human rights, and "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".<sup>3</sup>

2. The COVID-19 pandemic has compromised the exercise of all human rights and has reminded us of our fragile nature. In this report, the Special Rapporteur assesses the implications of the COVID-19 pandemic in the Democratic People's Republic of Korea. To date, no cases have been confirmed according to the authorities, which is in part due to the Government's proactive efforts on prevention. However, drastic containment measures have resulted in a number of concerning consequences that further isolate the people of the Democratic People's Republic of Korea from the outside world. The country has been isolating itself from social, political, economic and diplomatic engagements, including with the United Nations. The authorities have reinforced the doctrine of the *juche* idea, a political aim that the Democratic People's Republic of Korea seeks based on the principle of sovereignty, but adjustments and corrections are required when these measures impact on sensitive aspects of the universal human rights system upheld in the Charter of the United Nations, including the need to cooperate and engage on human rights issues.

3. The Special Rapporteur regrets that the Government of the Democratic People's Republic of Korea continues to oppose his mandate and does not respond to his requests to visit the country. Owing to travel restrictions, he has not been able to undertake any official missions to the Republic of Korea or neighboring countries since his visit to Japan from 2 to 4 December 2019 and to Thailand from 28 to 29 November 2019. The Special Rapporteur instead held a series of online meetings with victims of human rights violations, their family members, civil society organizations, United Nations agencies, governments and media. Whereas accountability satisfies the right to justice and helps to deter further abuses, cooperation and engagement create the conditions for a substantive and meaningful improvement in human rights. This provides fertile ground to cultivate peace in the Korean Peninsula that not only the people of both Koreas, but also neighboring countries and the whole world, deserve and demand. For these reasons, the Special Rapporteur continues to uphold a two-track approach of engagement and accountability in his mandate.

## II. Political and security situation

4. The inter-Korea joint liaison office in the Kaesong Industrial Zone was demolished by the Democratic People's Republic of Korea in June 2020.<sup>4</sup> The office was opened in 2018

<sup>1</sup> A/HRC/46/52.

<sup>2</sup> Tomás Ojea Quintana was the Special Rapporteur on the situation of human rights in Myanmar from 2008-2014.

<sup>3</sup> Preamble of the Universal Declaration of Human Rights.

<sup>4</sup> North Korea demolishes inter-Korean liaison office at Kaesong | NK News.

to enhance communication and engagement between the two Koreas, and its demolition marked the fragile nature of peace and denuclearization negotiations on the Korean peninsula. The summit meetings between the Koreas and between the Democratic People's Republic of Korea and the United States of America during 2018 and 2019 had generated high expectations for the peaceful resolution of conflict, but these measures have not yet yielded concrete outcomes. Measures to contain the COVID-19 pandemic globally have further reduced space for negotiations. Together with the Republic of Korea, the new administration of the United States should explore practical approaches to pursue denuclearization, peace and human rights on the Korean Peninsula.

5. The Democratic People's Republic of Korea has continued to refrain from nuclear and intercontinental ballistic missile tests since November 2017, but at the same time the Government has regularly exhibited progress in nuclear and missile technologies. The Special Rapporteur continues to support all efforts to negotiate on the security agenda with the Democratic People's Republic of Korea. The Special Rapporteur, in his bilateral discussions with the United States and the Republic of Korea, has persistently called on the need to apply a principled approach to negotiations and not to shy away from raising concerns about the human rights situation in the Democratic People's Republic of Korea, including regarding the lack of cooperation with UN mechanisms, in particular with his mandate and OHCHR. Negotiations should also include a commitment from the Government of the Democratic People's Republic of Korea to meaningful progress and engagement on human rights. The denuclearization agenda, the urgent need for peace on the Korean Peninsula and the grave human rights situation in the Democratic People's Republic of Korea are interconnected and reinforce each other. In this vein, the latest informal discussion at the Security Council in December 2020 on the human rights situation in the Democratic People's Republic of Korea is a step in the right direction.

6. There is no doubt that the Security Council has an important obligation with respect to a country which perpetuates serious and pervasive human rights abuses and which has illegally acquired nuclear weapons and ballistic missile technology capable of flying nuclear war-heads across borders, thereby imposing threat to international peace and security. The Security Council has been called on to take action on the human rights situation in the Democratic People's Republic of Korea by other relevant UN bodies, namely the General Assembly and the Human Rights Council, specifically to refer the situation to the International Criminal Court. This decisive action has yet to be realized. In the view of the Special Rapporteur, the Security Council must also not lose sight of the adverse consequences of the severe sanctions regime aimed at curtailing the resources for the Democratic People's Republic of Korea to develop nuclear and missile technologies. According to limited but repeated information, the sanctions regime has impacted both humanitarian assistance and the basic economic and social rights of the people in the country. While the Democratic People's Republic of Korea seems to make progress in developing its weapon capabilities, the people bear much of the burden of sanctions, and addressing this reality should not be a taboo.

7. The Special Rapporteur calls on the countries in the region, particularly those neighboring the Democratic People's Republic of Korea, the People's Republic of China and the Russian Federation, to actively engage on human rights issues in the Democratic People's Republic of Korea, as they have engaged in the denuclearization and security agendas. As stressed repeatedly, the two matters are interlinked and could provoke political and social instability if not properly addressed. Given the geographical proximity, historical diplomatic engagements and economic reliance between their countries, the Special Rapporteur encourages the Chinese authorities to exercise their influence and leverage to encourage the Government of Democratic People's Republic of Korea to initiate dialogue with his mandate with a view to improving human rights on the ground.

8. Due to the restrictions on travel as COVID-19 preventative measures, the number of escapees from the Democratic People's Republic of Korea arriving in the Republic of Korea has declined significantly. In 2020, only 229 escapees arrived in the Republic of Korea, a

significant drop from 1,047 in 2019.<sup>5</sup> Escapees continue to be reportedly repatriated to the Democratic People's Republic of Korea from China, which may compromise the principle of non-refoulement. With the limited international presence inside the Democratic People's Republic of Korea and the reduction in escapee arrivals in the Republic of Korea, who provide first-hand information, the paucity of information on the human rights situation in the country is worse than ever.

9. The Democratic People's Republic of Korea convened the 8th session of the Congress of the Workers' Party of Korea, the only political party existing in the country, on 5-12 January 2021 amid the deteriorating economic situation, further aggravated by COVID-19 and seasonal cycles of natural disasters. The centralization of the leadership continued with Kim Jong Un elected as the General Secretary of the Workers' Party of Korea. General Secretary Kim Jong Un mentioned the COVID-19 pandemic as "[l]ast year was a quite difficult year, in the circumstances of the world public health crisis that lasted unprecedentedly long in history..."<sup>6</sup> The discussions at the Congress appeared to focus on strengthening military and strategic capabilities, a new five-year economic plan, and the eradication of combating anti-socialist phenomenon. The leadership admitted the failure of the previous five-year economic plan. While no details were disclosed about the new programme, there were some indications that the State will exert greater control over the economy against private market initiatives. The agenda also included solutions to improve living standards by achieving planned and continuous growth of production in agriculture, light industry and the fishing industry and by developing cities and counties.<sup>7</sup> General Secretary Kim Jong Un has recently stressed that the country is facing its worst-ever difficulties, and criticized officials in control and overseeing the implementation of economic policies.<sup>8</sup>

10. Regarding the peace process, General Secretary Kim Jong Un criticized the Republic of Korea for failing to adhere to its commitments but remained open to engagement on the condition that the Republic of Korea authorities strictly control and root out any abnormal and anti-reunification conduct and that United States withdraw policies which the Democratic People's Republic of Korea considers hostile. Leading up to the Congress, the Government implemented an 80-day loyalty campaign wherein every citizen provided mandatory long-hour labour to fulfill or exceed newly assigned quotas in all areas in order to finish state projects including typhoon rehabilitation efforts and COVID-19 prevention campaigns, and boost national productivity in agriculture, coal mining and other areas.<sup>9</sup> On 18 January, new Cabinet members were appointed and there are no women in the current cabinet. On a positive note, media reported that in November 2020 the Government ordered a nationwide survey to measure illiteracy in the country, with the aim of eradicating it.<sup>10</sup>

### III. Accountability for crimes against Humanity

#### A. Background

11. The human rights situation in the Democratic People's Republic of Korea was formally addressed by the United Nations for the first time in 2003. After advocacy by civil society organizations and academia, the Commission on Human Rights adopted resolution 16/4, expressing its deep concern about reports of systemic, widespread and grave violations

<sup>5</sup> Ministry of Unification of the Republic of Korea, Policy on North Korean Defectors< Data & Statistics< South-North Relations< 통일부\_영문 (unikorea.go.kr).

<sup>6</sup> KCNA Watch on 6 January 2021 available at <https://kcnawatch.jp/newstream/1609914831-848334469/supreme-leader-kim-jong-un-makes-opening-speech-at-8th-wpk-congress/>.

<sup>7</sup> KCNA Watch on 7 January 2021 available at <https://kcnawatch.jp/newstream/1609970752-674090795/supreme-leader-kim-jong-un-continues-report-on-work-of-7th-central-committee-of-wpk/>.

<sup>8</sup> Yonhap News on 18 January 2021 available at <https://en.yna.co.kr/view/AEN20210118000352325?section=nk/nk>; and News 1 on 18 January 2021 available at <https://www.news1.kr/photos/details/?4578359>.

<sup>9</sup> NK News on 5 October available at North Korean Politburo starts '80-day battle' ahead of January Party Congress | NK News.

<sup>10</sup> <https://www.rfa.org/english/news/korea/illiteracy-11252020000636.html>.

of human rights including the use of torture, public execution, prison camps, and restrictions on the freedom of expression among others.

12. In 2004, the Commission on Human Rights established the mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea to establish direct contact with the Government and people and to investigate and report on the human rights situation in the country. This mandate has been renewed annually since its establishment. In 2005, the General Assembly adopted resolution 60/173 expressing its serious concern at continuing reports of systemic, widespread and grave violations of human rights in the Democratic People's Republic of Korea and the refusal of the Government to recognize the mandate of the Special Rapporteur or to extend cooperation to him. Since then, the General Assembly has adopted a resolution annually on the human rights situation in the Democratic People's Republic of Korea.

13. Concerned about the continuing serious human rights violations in the Democratic People's Republic of Korea, the Human Rights Council in 2013 established a commission of inquiry with a mandate to "investigate the systematic, widespread and grave violations of human rights" in the country, "with a view to ensuring full accountability, in particular for violations which may amount to crimes against humanity".<sup>11</sup> In its landmark report of 2014,<sup>12</sup> the commission of inquiry documented serious human rights violations, some of which amount amounting to crimes against humanity. The commission made several recommendations to pursue justice and accountability, including the referral of the situation to the International Criminal Court or the establishment of an ad-hoc international tribunal<sup>13</sup> by the Security Council under Chapter VII or by the General Assembly using its residual powers and universal jurisdiction. It also recommended that OHCHR establish a field-based structure to "build on the collection of evidence and documentation work of the commission, and further expand its database" to help ensure accountability for human rights violations in the Democratic People's Republic of Korea, in particular where such violations amount to crimes against humanity.<sup>14</sup> In 2016, the Human Rights Council requested the High Commissioner for Human Rights to appoint a group of independent experts to explore appropriate approaches to seek accountability for human rights violations in the Democratic People's Republic of Korea<sup>15</sup>.

14. In 2014 the UN Security Council held its first Arria formula meeting on the situation of human rights in the Democratic People's Republic of Korea. From 2015 to 2017, the Council held annual discussions on the situation. After an impasse of two years, in December 2020, following an informal consultation, eight members of the Security Council issued a joint statement on the situation, reemphasizing the importance of a discussion of this topic in the Security Council and noting that human rights violations in the Democratic People's Republic of Korea pose an imminent threat to international peace and security.<sup>16</sup>

## **B. Crimes against humanity.**

15. In its 2014 report, the commission of inquiry concluded that there were reasonable grounds to believe that crimes against humanity had been committed and continued to be committed in the Democratic People's Republic of Korea. It highlighted that the gravity, scale and nature of those violations revealed a State that did not have any parallel in the contemporary world. The crimes against humanity listed by the commission included extermination, murder, enslavement, torture, imprisonment, rape, forced abortions and other forms of sexual violence, persecution on political, religious, racial and gender grounds, the forcible transfer of populations, enforced disappearances and the inhumane act of knowingly

<sup>11</sup> <https://documents-dds-ny.un.org/doc/RESOLUTION/LTD/G13/120/61/PDF/G1312061.pdf?OpenElement>.

<sup>12</sup> A/HRC/25/63.

<sup>13</sup> *Ibid.*, para. 87.

<sup>14</sup> *Ibid.*, Para. 94(c).

<sup>15</sup> A/HRC/RES/31/18, A/HRC/34/66/Add.1.

<sup>16</sup> Statement by Germany, Belgium, the Dominican Republic, Estonia, France, the UK, the USA and Japan on the Human Rights Situation in DPRK, December 11 - Federal Foreign Office (diplo.de).

causing prolonged starvation.<sup>17</sup> OHCHR, in its recent report to the Human Rights Council on promoting accountability in the Democratic People's Republic of Korea pursuant to resolutions 34/24 and 40/20, stated that “[a]nalysis of available information continues to confirm that there are reasonable grounds to believe that crimes against humanity have been committed and may be ongoing in the Democratic People's Republic of Korea”<sup>18</sup> Since the beginning of his mandate in June 2016, the Special Rapporteur has received verifiable and credible information that confirms the conclusions of both the commission of inquiry and OHCHR.

16. The Government of the Democratic People's Republic of Korea bears the primary responsibility to investigate and hold accountable those responsible for crimes against humanity. The Government continues to reject outright all allegations of serious human rights violations in the country despite ample evidence from the United Nations and other organizations. There are still no signs that the Democratic People's Republic of Korea has overcome the entrenched culture of impunity to hold accountable individuals who are responsible for human rights violations. The Special Rapporteur is of the view that the crimes against humanity committed in the Democratic People's Republic of Korea may entail the criminal liability of the highest authorities of the country. Given the centralized structure and decision-making processes within the State, there are reasonable grounds to believe that existing State policies which violate human rights are decided at the highest levels.

### C. The International obligation to prosecute

17. The Democratic People's Republic of Korea has obligations to investigate, prosecute, and punish serious human rights violations under various provisions of international law. The duty to prosecute arises firstly from the right of victims to an effective remedy for human rights violations. While the Universal Declaration of Human Rights is not a legally binding instrument, many of its provisions are now considered customary international law. Building on the Universal Declaration, the International Covenant on Civil and Political Rights, to which the Democratic People's Republic of Korea remains a party,<sup>19</sup> obliges states parties to ensure an effective remedy for violations of human rights.<sup>20</sup> In interpreting this article, the Human Rights Committee clarified the obligation of states parties to take effective steps to investigate violations of human rights “promptly, thoroughly, and effectively through independent and impartial bodies” and to ensure those responsible are brought to justice.<sup>21</sup> The Committee further stressed that failure to investigate and bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant.<sup>22</sup> With respect to genocide and violations of international humanitarian law, the relevant legal instruments clearly state an obligation to prosecute such violations.<sup>23</sup>

<sup>17</sup> A/HRC/25/63, para. 76.

<sup>18</sup> A/HRC/46/52, para. 2.

<sup>19</sup> The Democratic People's Republic of Korea acceded to the International Covenant on Civil and Political Rights in 1981. In 1997, the State sought to withdraw from the Covenant. However, the Secretary-General communicated the opinion that as the Covenant does not contain withdrawal provisions, a withdrawal would not appear possible unless all States Parties agreed to such a withdrawal. In 1997, as a response, the Human Rights Committee issued General comment 26 on issues relating to the continuity of obligations to the International Covenant on Civil and Political Rights, CCPR/C/21/Rev1/Add 8/Rev 1. Subsequently, the Democratic People's Republic of Korea acknowledged its obligations under the treaty by submitting its second periodic report to the Human Rights Committee.

<sup>20</sup> International Covenant on Civil and Political Rights, Article 2 (3).

<sup>21</sup> Human Rights Committee, general comment No. 31, paras. 15 and 18.

<sup>22</sup> *Id.*

<sup>23</sup> These are the 1948 Convention for the Prevention and Punishment of the Crime of Genocide, article 4, to which the Democratic People's Republic of Korea acceded in 1989, and the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, article 49; the Geneva Convention for the Amelioration of the condition of Wounded, Sick and Shipwrecked Members of Armed Forces, article 50; the Geneva Convention Relative to the Treatment of Prisoners of War, article. 129; and the Geneva Convention Relative to the Protection of Civilian Persons, art. 146, to which the Democratic People's Republic of Korea acceded in 1958.

18. While the primary obligation rests with the Democratic People's Republic of Korea to address systematic human rights violations through its national laws and judicial processes, in the Special Rapporteur's view, other states should prosecute perpetrators where the Democratic People's Republic of Korea is unable or unwilling to prosecute. While the Democratic People's Republic of Korea is not a party to the Rome Statute of the International Criminal Court, the Rome Statute reflects customary international law. The International Criminal Court's principle of complementarity has institutionalized the primary responsibility for prosecuting international crimes to national criminal jurisdictions.<sup>24</sup> However, the Rome Statute reinforces the obligation to prosecute when there is lack of political will or ability to carry out the investigation or prosecution.<sup>25</sup> In its 2014 report, the commission of inquiry found that the State institutions of the Democratic People's Republic of Korea are neither willing nor able to effectively investigate and prosecute crimes against humanity, which are prohibited under the principle of *jus cogens*, and impunity is enjoyed by those most responsible for crimes against humanity.<sup>26</sup> This finding, which in the Special Rapporteur's assessment has not changed, would appear to trigger the obligation of other states to take action.

19. The four Geneva Conventions, the Convention for the Prevention and Punishment for Crimes of Genocide, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment obligate states parties to extradite or prosecute (*aut dedere aut judicare*) perpetrators of violations, regardless of the nationality of the perpetrator or the victim and the place the crime was committed. Notably, the Convention against Torture requires states to take necessary measures to establish jurisdiction over such offences whenever the offender is present in their territory.<sup>27</sup> This requirement may be considered as obligating states to apply the principle of universal jurisdiction in respect of torture. More recently, the International Convention for the Protection of All Persons from Enforced Disappearance also obligates states parties to extradite or prosecute.<sup>28</sup>

20. In addition to prosecuting offenders, states also have the duty to assist each other to ensure accountability for serious violations of human rights and international humanitarian law.<sup>29</sup> The concept of "responsibility to protect" represents an agreement to take collective action, including under Chapters VI and VIII of the Charter of the United Nations, where states manifestly fail to protect their populations from gross human rights violations.<sup>30</sup> Again taking the Rome Statute as a distillation of customary law, it affirms that "the most serious crimes of concern to the international community as a whole must not go unpunished" and "their effective prosecution must be ensured" both at the national level and through international cooperation.<sup>31</sup> The Human Rights Committee reiterated the duty of the international community to cooperate: "State parties should also assist each other to bring to justice persons suspected of having committed acts in violation of the Covenant that are punishable under domestic or international law."<sup>32</sup>

#### D. The responsibility of the UN Security Council in pursuing accountability

21. The international obligation of States to prosecute connects directly with the responsibility of the Security Council to pursue accountability for the most serious human rights abuses in the Democratic People's Republic of Korea under the provisions of Chapter VII of the UN Charter and/or based on the principle of universal jurisdiction and, where

<sup>24</sup> Rome Statute, preamble, para.10, article 1.

<sup>25</sup> Rome Statute, article 17.

<sup>26</sup> A/HRC/25/CRP.1, paras.1199 and 1216.

<sup>27</sup> Article 5.

<sup>28</sup> Articles 9(2) and 11(1).

<sup>29</sup> A/HRC/27/56, para. 30.

<sup>30</sup> At the 2005 high-level UN World Summit meeting, Member States committed to the principle of the responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. (A/RES/60/1).

<sup>31</sup> Rome Statute, preamble, para.4.

<sup>32</sup> Human Rights Committee general comment No. 31, para. 18.

necessary, through referral to the International Criminal Court pursuant to article 13(b) of the Rome Statute.<sup>33</sup>

22. Following up on the recommendations of 2014 commission of inquiry report, both the Human Rights Council and the General Assembly have repeatedly encouraged the Security Council to take appropriate measures to ensure accountability including through referral of the situation in the Democratic People's Republic of Korea to the International Criminal Court and sanctions targeting those who appear to be most responsible for human rights violations<sup>34</sup>. In the meantime, the people in the Democratic People's Republic of Korea have continued for decades to suffer or fear grave abuses from State institutions that are supposed to protect them. In the view of the Special Rapporteur, the Security Council should bear responsibility for its inaction against the continuation of crimes against humanity in the Democratic People's Republic of Korea. A rationale based on human rights demands that the fight against abuses of such a scale, gravity and nature cannot take a back seat to national or geopolitical interests. Failing to take action may be legal, but it is not justifiable under the UN Charter.<sup>35</sup>

23. In contrast to the human rights situation, the measures implemented by the Security Council against the development of nuclear weapons by the Democratic People's Republic of Korea entail the most comprehensive and prohibitive regime of sanctions ever put in place. Maintenance of international peace and security is critical in the case of the Democratic People's Republic of Korea, and consensus at the Security Council has had positive effects to this end. However, the Special Rapporteur has argued repeatedly in previous reports that these comprehensive sanctions have affected the economic and social rights of the people in the Democratic People's Republic of Korea. Grave violations of human rights also threaten peace and security, as do nuclear weapons. The Security Council should therefore take a holistic approach to addressing peace and security concerns, including through the referral of the situation to the International Criminal Court, rather than simply repeating sanctions concerning denuclearization.

24. In addressing the role of the Security Council in relation to the human rights situation in the Democratic People's Republic of Korea, veto powers of the permanent members cannot be overlooked. A rationale that embraces universal human rights emanating from the UN Charter should guide the exercise of the veto power, in particular in respect of a possible referral to the International Criminal Court. The deteriorating human rights situation in the Democratic People's Republic of Korea over decades urgently requires the permanent members of the Security Council to reach consensus to refer the situation to the International Criminal Court. The Special Rapporteur believes that a transparent and open position of all permanent members of the Security Council on this issue is imperative to avoid the exercise of the veto power in such a format that would play a double prerogative, namely, to veto and to not reveal their position.

## **E. Stakeholders' contributions on options for accountability**

### **Views of former members of the commission of inquiry**

25. In December 2020, the Special Rapporteur wrote to former members of the commission of inquiry on human rights in the Democratic People's Republic of Korea, Mr. Michael Kirby, Ms. Sonja Biserko, and Mr. Marzuki Darusman to seek their views on

<sup>33</sup> There are disputes among experts on whether the International Criminal Court's jurisdiction over non-party States situations triggered under art. 13(b) is based on universal jurisdiction or on the power of the Security Council under Chapter VII.

<sup>34</sup> A/RES/75/190 and A/HRC/RES/43/25.

<sup>35</sup> In connection to this responsibility, it is worth mentioning the remarks made by the Deputy Secretary General Jan Eliasson on behalf of the Secretary General in May 2014 at the Security Council meeting on Syria: "*The Security Council has an inescapable responsibility in this regard. States that are members of both the Security Council and the Human Rights Council have a particular duty to end the bloodshed and to ensure justice for the victims of unspeakable crimes*" <https://www.un.org/sg/en/content/dsg/statement/2014-05-22/deputy-secretary-generals-remarks-behalf-secretary-general-security>.

progress and challenges in promoting the accountability agenda for human rights violations in the country. In their reply<sup>36</sup>, the former Commissioners recommended; 1) the dissemination of the Commission's report in accessible hard copy format, and desirably also a Korean translated version, including in the Democratic People's Republic of Korea; 2) increased resources for the OHCHR office including its field based structure in Seoul; 3) the revival and continuation of regular Security Council meetings to discuss denuclearization and accountability for human rights; and 4) the appointment of an independent expert or panel to bring up to date the recommendations made by the Commission. The Commissioners noted that the OHCHR has recently reconfirmed<sup>37</sup> that reasonable grounds exist to believe that human rights violations and crimes against humanity continue in the Democratic People's Republic of Korea. This finding should be met with a renewed demand for accountability seven years after the initial findings. To fulfil the rights of victims to truth, justice, reparations and guarantees of non-recurrence, the prosecution of alleged international crimes remains a high priority, preferably through referral of the situation to the International Criminal Court or through the establishment of an ad hoc tribunal

### Views of Civil Society Organizations

26. Civil society organizations and activists have long worked to promote the human rights of the people of the Democratic People's Republic of Korea, to end impunity, and ensure justice. In December 2020, to honor their efforts and to benefit from their expertise, the Special Rapporteur made a call for submission on his website to civil society organizations and other stakeholders to share their views for this report. They were asked: 1) What progress and limitations they see on accountability issues in the Democratic People's Republic of Korea seven years after the commission of inquiry report, and how they envisage the way forward; and 2) What their views are on the approach that should be taken to ensure that the obligation to respect human rights in the Democratic People's Republic of Korea, including on accountability measures and ending impunity, and the need for the establishment of peace on the Korean Peninsula are fulfilled. Nine stakeholders submitted their views, which are summarized below.<sup>38</sup>

- Citizens' Alliance for North Korean Human Rights highlighted the issue of slavery in the supply chain, particularly of coal production and a pyramid system of quotas that relies on the extortion of goods and forced labor in a vast network of detention and political prison camps. It recommended that the UN examine the intricate connections between the senior leadership's reliance on serious human rights crimes to remain in power; and the use of profit from international trade and investments in strengthening its military and nuclear capabilities.
- The Committee for Human Rights in North Korea, while stressing the need for the Security Council, General Assembly, and Human Rights Council to address crimes against humanity and the need for accountability, including the referral to the International Criminal Court, suggested that UN member states could consider alternative accountability mechanisms, with the support of civil society organizations worldwide. It also noted that the severe impediments to humanitarian aid caused by the COVID-19 pandemic could provide an opportunity for a "reset" to implement a Human Rights up Front approach to aid.
- Human Rights Watch recommended that the Human Rights Council, in its upcoming resolution, should align the OHCHR Seoul office's existing mandate with other independent investigative mechanisms such as those for Myanmar and Syria, and provide for an expert on financial forensics and a Korean-speaking outreach officer. It also recommended that the OHCHR Seoul office analyze criminal laws of the Republic of Korea to identify opportunities and limitations for future accountability processes. It further recommended that the United Nations and governments integrate human rights

<sup>36</sup> The full submission of the former members of the Commission of Inquiry is available at: OHCHR | Special Rapporteur on Democratic People's Republic of Korea and <https://seoul.ohchr.org/EN/Pages/HOME.aspx>.

<sup>37</sup> A/HRC/46/52.

<sup>38</sup> The full responses of the civil society organizations are available at: OHCHR | Special Rapporteur on Democratic People's Republic of Korea and <https://seoul.ohchr.org/EN/Pages/HOME.aspx>.

in any negotiations with the Democratic People's Republic of Korea to reach a lasting, sustainable peace on the Korean Peninsula.

- Jubilee Campaign observed that few to no improvements have been made, particularly in regards to women's rights and protection mechanisms. Concerns include ill treatment, forced abortion and hard labour of repatriated women, and domestic and sexual violence in the Democratic People's Republic of Korea, forced marriage and sexual exploitation of trafficked women and girls in China, and hardships in the Republic of Korea after resettlement such as stigma, economic disadvantages, and exploitation.
- Justice for North Korea stated that the UN's work on accountability is a cause for hope to advance the North Korean human rights movement as it promotes trust among witnesses to share their information, and brings media attention to the issue. It expressed concerns regarding the approach of the Government of the Republic of Korea on human rights issues and stressed the continued importance of international awareness-raising and advocacy.
- Korea Future Initiative outlined the experiences of victims as well as the identification of numerous perpetrators, including State officials, with respect to violations of freedom of religion committed in the Democratic People's Republic of Korea. It called for capacity-building among civil society actors and for targeted individual sanctions against perpetrators, considering that referral to the International Criminal Court or the creation of an ad hoc mechanism seems unlikely.
- Open North Korea noted a lack of progress on accountability, but observed that the presence of the OHCHR Office in Seoul had raised awareness, helped develop the capacity of civil society, and allowed the collection of additional information not covered by the commission of inquiry. It observed the different approaches to human rights in the Democratic People's Republic of Korea across the political spectrum within the Republic of Korea and called for a less partisan and more human rights-based approach to the issue.
- Ms. Park Jihyun, a British-North Korean escapee and activist, recommended that the international community strongly request the Democratic People's Republic of Korea to allow visits by special rapporteurs and to share information regarding prison camps and the lives of its people, and punish non-compliance with such a request. People of the Democratic People's Republic of Korea should also be allowed to access information. She noted that the rights of the people of the Democratic People's Republic of Korea depend on the political climate and noted the importance of engaging with victims who can describe their experiences in their own voices. She also noted the importance of accepting escapees from the Democratic People's Republic of Korea as refugees.
- People for Successful Korean Reunification (PSCORE) highlighted concerns and recommendations in the areas of children's rights, women's rights, digital rights and abductions. It recommended that the Democratic People's Republic of Korea allow third-party experts, specifically UN members, to access the country to evaluate and report on human rights. It also recommended democratic and rights-based reforms inside the country and called for the international community to protect escapees as refugees.

#### **F. Way forward for accountability**

27. The work of civil society organizations and victims' groups remains important for accountability and ending impunity for human rights violations in the Democratic People's Republic of Korea. People from the Democratic People's Republic of Korea living in the Republic of Korea, Japan, the United Kingdom, the United States of America and other countries have been actively advocating for justice and accountability for human rights violations in the Democratic People's Republic of Korea through publishing reports, awareness-raising programs, speaking at public events and advocating with governments and the United Nations. Civil society organizations are active in documentation efforts for future accountability and memorialization. In addition, civil society organizations are increasingly contributing information they have gathered to the central evidence and information repository established and maintained by OHCHR.

28. In recent years, a small number of victims and their families in Japan, the Republic of Korea and the United States of America have sought justice in their national courts. In the Republic of Korea, two men, former prisoners of war held by the Democratic People's Republic of Korea in the early 1950s, filed a civil lawsuit in 2019 against the Government of the Democratic People's Republic of Korea and General Secretary Kim Jong Un. In July 2020, a judgment was issued against the defendants (without their participation), awarding damages equivalent to \$17,600 to each former prisoner of war. In August 2018, five victims of the Paradise on Earth campaign,<sup>39</sup> four women and one man, who had escaped from the Democratic People's Republic of Korea between 2001 and 2003, filed a civil lawsuit in Japan against the Government of the Democratic People's Republic of Korea, seeking compensation equivalent to approximately \$964,000 for each plaintiff for the infringement of their human rights. In a civil lawsuit brought in the United States of America by the family of Otto Warmbier, the court issued a default judgment finding the Democratic People's Republic of Korea liable for the hostage-taking, torture and extrajudicial killing of Mr. Warmbier and awarding damages in excess of \$501 million to his family. In May 2020 the court ordered three banks to disclose information on accounts holding frozen assets of the Democratic People's Republic of Korea, to examine potential means of securing satisfaction of the judgment. The lack of cooperation from the Democratic People's Republic of Korea remains an obstacle in these cases. Universal jurisdiction cases in countries open to application should be regarded as potential venues for accountability.

29. Victims and civil society organizations are increasingly active in submitting petitions on the human rights violations in the Democratic People's Republic of Korea to the Special Procedures of the Human Rights Council. Numerous petitions have been submitted to the Working Group on Enforced or Involuntary Disappearances. Some of these petitions related to abductees from the Republic of Korea during and after the Korean War and in the 11 December 1969 hijacking of Korean Air Lines flight YS-11 as well as Japanese and other foreign nationals abducted in the 1970s and 1980s. The Working Group transmitted twelve new cases to the Democratic People's Republic of Korea in September 2020.<sup>40</sup> In Japan and the Republic of Korea, victims groups, civil society organizations, research institutes have organized programs to raise awareness and demand action on human rights violations, in particular on abductions. Family groups in Japan and the Republic of Korea support each other by exchanging views among themselves as well as with families of abductees and detainees from other countries.

30. In this respect, the Special Rapporteur notes that the temporal jurisdiction of the International Criminal Court appears limited with respect to these enforced disappearances and abductions.<sup>41</sup> However, he believes that the continuing nature of these crimes may warrant a fresh consideration with respect to the possible jurisdiction of international tribunals. Additionally, the Special Rapporteur recalls that the Commission of Inquiry noted that no such limit to temporal jurisdiction applies to the crime of imprisonment and other serious deprivations of liberty, which are often committed in connection to enforced disappearance. On this basis, the Special Rapporteur is also of the view that these crimes against humanity related to the international abductions could potentially be subjected to the jurisdiction of the International Criminal Court.

31. The Special Rapporteur is convinced that in absence of immediate action on accountability, the international community should respect, protect and maintain civic space that enables victims, families, escapees and civil society organizations to continue their efforts in monitoring, documentation and advocacy, which is essential for the fight against impunity in the Democratic People's Republic of Korea. In the Republic of Korea, civil society organizations do not have access to the Hanawon Resettlement Support Centers for North Korean Refugees to interview escapees. It is important that civil society, not only States or the United Nations, have access to Hanawon Centers to interview recently arrived people from the Democratic People's Republic of Korea. In addition, civil society

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<sup>39</sup> Paradise on Earth was a campaign to promote the "return" of ethnic Koreans from 1959 to 1984, resulted in the migration of 93,340 people to the Democratic People's Republic of Korea, mostly from Japan.

<sup>40</sup> A/HRC/WGEID/122/1.

<sup>41</sup> Rome Statute article 7(1) on Elements of Crimes.

organizations' applications for consultative status with ECOSOC should be positively considered, as this status is a requirement to be accredited as an observer to the Human Rights Council.

32. The Special Rapporteur engaged with the Government of the Republic of Korea on its decision to conduct business inspections of civil society organizations and the revision of the Development of Inter-Korean Relations Act. The revision to the Development of Inter-Korean Relations Act prohibited the flying of balloons and leaflets, broadcasting by loudspeakers and installation of visual materials along the military demarcation line, punishing these with possible imprisonment to up to three years. The Special Rapporteur expressed concern that the revised law limits many activities of escapees and civil society organizations, and such limits may not comply with international human rights law, and recommended a review of the legislation. In January 2021, the Ministry of Unification issued guidelines on the interpretation of the law clarifying that this Act is not applicable to the activities from a third country.

33. The United Nations has a responsibility to support and facilitate the work of civil society organizations, lawyers and victims' groups in their fight against impunity. The Special Rapporteur supports the work of OHCHR, particularly its field-based structure in Seoul, in coordinating efforts by civil society organizations and lawyers, building their capacity, and amplifying the voices of victims, including escapees from the Democratic People's Republic of Korea and their families, and activists.

34. The process of fighting against impunity will also help build a sustainable peace on the Korean Peninsula. As an escapee from the Democratic People's Republic of Korea told OHCHR, "people matter whenever we discuss reconciliation and peace."<sup>42</sup> Peace for all Koreans can be comprehended only by Korean people, therefore people's search for truth and justice should be supported as an integrated part of peace process. Therefore, the United Nations must be coherent in emphasizing human rights while pursuing peace, development and denuclearization in the Democratic People's Republic of Korea.

#### **IV. Situation on human rights in the Democratic People's Republic of Korea**

##### **Impact of COVID-19 pandemic on human rights**

35. According to the WHO, the Democratic People's Republic of Korea had tested 13,259 people for COVID-19 as of 31 December 2020. All the results were negative. The Government of the Democratic People's Republic of Korea applied to join the COVAX scheme, an initiative for equitable global access to COVID-19 vaccines, a welcome approach to international cooperation. The country is expected to receive 1,992,000 doses of the AstraZeneca/Oxford Vaccine in the first half of 2021 under this initiative. The Special Rapporteur urges the Government to take this opportunity to grant full and unimpeded access not only to medical and related staff involved in COVID-19 vaccinations but also to humanitarian actors providing critical support.

36. The Democratic People's Republic of Korea continues to strictly implement its anti-epidemic measures. Authorities have occasionally locked down several cities as a measure to control possible COVID-19 transmission and residents exhibiting fevers for more than three days are reportedly required to self-isolate. A reported new emergency anti-virus law required both citizens and foreigners to unconditionally comply with anti-epidemic measures.<sup>43</sup> Unconfirmed reports indicated that a buffer zone has been set up 1-2 km along the borders and that officials have authorized law enforcement agencies to "shoot on sight" anyone attempting to cross the country's borders.<sup>44</sup> On 22 September, a 47-year-old official of the Ministry of Oceans and Fisheries of the Republic of Korea was shot dead by the security forces of the Democratic People's Republic of Korea. The Special Rapporteur sent

<sup>42</sup> OHCHR, Discussion paper on Laying the human rights foundations for peace (September 2020), p. 30.

<sup>43</sup> <https://en.yna.co.kr/view/AEN20201101001200325?section=nk/nk>.

<sup>44</sup> <https://www.hrw.org/news/2020/10/28/north-koreas-unlawful-shoot-sight-orders>.

an official letter to the Democratic People's Republic of Korea and to the Republic of Korea requesting further information about the case. The Special Rapporteur has received a response only from the Republic of Korea. The Democratic People's Republic of Korea must hold those responsible to account, compensate the family of the official and review State policy on dealing with alleged trespassers. The Republic of Korea should also provide all available information on the incident and urge the Democratic People's Republic of Korea to comply with its international obligations.

37. Several cases of severe punishment against those breaking anti-epidemic prevention measures were reported by media. In December 2020, a man in his 50s who was allegedly involved in illicit trade with China was reportedly publicly executed. In November 2020, two border guard officers and two rank-and-file soldiers allegedly involved in smuggling were reportedly executed. The same month, a high-profile moneychanger was allegedly executed in Pyongyang. A new detention facility for those violating COVID-19 quarantine measures was reportedly built in North Hwanghae province. The situation of prisons in the Democratic People's Republic of Korea, including political prison camps, remains of the utmost concern, as reflected in the latest OHCHR reports.<sup>45</sup> The COVID-19 situation has increased the vulnerability of people in detention. Detainees in the country rely on family visits to access decent food and medical care;<sup>46</sup> however, families are currently unable to visit them due to COVID-19. On the occasion of the 75th anniversary of the foundation of the Workers Party of Korea, on 10 October 2020, the Government reportedly released 7,000 prisoners under a general amnesty.<sup>47</sup>

38. The Special Rapporteur recommends that the Government follow the joint guidelines of the United Nations Office on Drugs and Crime (UNODC), the WHO, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and OHCHR on COVID-19 in prisons and other closed settings<sup>48</sup> and abide by the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Special Rapporteur also recommends that OHCHR organize an international conference on prisons in the Democratic People's Republic of Korea to develop comprehensive programs to improve the situation by opening access for monitoring and building national capacity. Such discussions should be as broad-based as possible, including UN agencies working inside the Democratic People's Republic of Korea, civil society organizations, relevant UN human rights mechanisms including treaty bodies and special procedures, member states, international organizations and detainees and their families.

39. Prolonged COVID-19 prevention measures have resulted in a drastic decline in trade and commercial activities and severe economic hardship to the general population, causing increased food insecurity. According to the United Nations Food and Agriculture Organization, the prevalence of undernourishment in the Democratic People's Republic of Korea was more than 45 per cent prior to the pandemic between 2017 and 2019.<sup>49</sup> Concerns remain that restrictions on trade with China, limited market activities, lack of humanitarian support to affected populations, ongoing implementation of sanctions and damage to agriculture caused by typhoons and floods in August and September 2020 could lead to a serious food crisis. Deaths by starvation have been reported, as has an increase in the number of children and elderly people who have resorted to begging as families are unable to support them.

40. Humanitarian operations inside the country have nearly come to a halt and only three international humanitarian workers (two UN and one NGO staff) currently remain inside the country. International organizations such as International Committee of Red Cross and International Federation of Red Cross and Red Crescent Societies have no international personnel in the country. Humanitarian agencies are unable to carry out on-site assessment

<sup>45</sup> A/HRC/46/52; OHCHR Seoul report "I still feel the pain...", July 2020.

<sup>46</sup> OHCHR Seoul report "I still feel the pain...", July 2020, pp. 45-7, 67.

<sup>47</sup> North Korea Releases 7,000 Prisoners, Orders People to Provide for Them — Radio Free Asia (rfa.org).

<sup>48</sup> See [www.ohchr.org/Documents/Events/COVID-19/20200513\\_PS\\_COVID\\_and\\_Prisons\\_EN.pdf](http://www.ohchr.org/Documents/Events/COVID-19/20200513_PS_COVID_and_Prisons_EN.pdf).

<sup>49</sup> <http://www.fao.org/3/cb2895en/CB2895EN.pdf>.

missions to monitor and implement crucial lifesaving projects. While the Sanctions Committee has expedited exemptions for humanitarian assistance and has simplified the exemptions procedures<sup>50</sup>, humanitarian goods bound for the Democratic People's Republic of Korea have remained at the border with China for months due to restrictions on imports of goods. Such extended storage has incurred additional costs for humanitarian organizations.

41. The Korea International Trade Association reported that trade between the Democratic People's Republic of Korea's and China decreased by 80 percent in 2020 compared to 2019. The reduction in trade with China has resulted in a significant decrease in market activities, reducing earnings for many families who relied on small-scale market activities. There have been shortages of essential goods, medicines, agricultural inputs for farming and raw materials for State-owned factories. The authorities continue to emphasize self-reliance by producing essential goods domestically. Concerns remained that the Government's crackdown on market activity to prevent the spread of COVID-19 could stymie efforts to institutionalize and legalize market processes.<sup>51</sup> General Secretary Kim Jong Un in his speech to the eighth Congress of the Workers Party of Korea in January 2021 highlighted the need to restore the State's leading role in commerce activities, signaling a tightening of government control over market activities.

42. The Special Rapporteur urges the authorities of the Democratic People's Republic of Korea to explore alternative measures to strike a balance between necessary disease prevention measures and the basic economic and social rights of the people. In light of expenditures on the military and the security sector, the Government should also realign priorities and dedicate its resources to ensure freedom from hunger and other essential minimum living standards for citizens. Finally, the Government should increase cooperation with the international community and allow humanitarian agencies to reach out the people in need while following safety protocols. It is time that the Government acted prudently to make sure that the negative consequences of prevention measures do not become disproportionately greater than the impact of the pandemic itself.

## V. Engagement

43. The COVID-19 pandemic demonstrates that cooperation and engagement is the only way to overcome human and social crises. The isolation of the Democratic People's Republic of Korea means the isolation of ordinary people who are already subject to patterns of serious human rights abuses. Providing entry points for the authorities to gradually open up dialogue and grant access to the country is critical, especially when the Government is exceptionally suspicious and reluctant to discuss human rights. It is worth mentioning that in the recent years the Government has made substantive decisions to allow further cooperation on human rights. It ratified the Convention on the Rights of Persons with Disabilities in 2016 and invited the Special Rapporteur on the rights of persons with disabilities to the country in May 2017.<sup>52</sup> The Government participated in the review by the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child in 2017. It also submitted its initial report to the Committee on the Rights of Persons with Disabilities in 2018. The UN Strategic Framework for Cooperation between the United Nations and the Government of the Democratic People's Republic of Korea (2017-2021) has explicitly stated that a human rights-based approach and gender equality are crosscutting approaches for its implementation. The Democratic People's Republic of Korea actively participated in the Third Cycle of the Universal Periodic Review in May 2019, and accepted some, but not all, of the resulting recommendations. Members of the State delegation that attended that review participated in a human rights workshop organized by OHCHR and the Department of Political Affairs in Geneva. The Government continued to show interest in technical

<sup>50</sup> On 30 November 2020, the approved updates to its seventh implementation assistance notice entitled "Guidelines for Obtaining Exemptions to Deliver Humanitarian Assistance to the Democratic People's Republic of Korea". <https://www.un.org/press/en/2020/sc14375.doc.htm>.

<sup>51</sup> OHCHR Report "The Price is Rights", pp. 15-17.

<sup>52</sup> The Special Rapporteur has encouraged other thematic mandate holders to engage with the Government with a view of visiting the country, and meetings with the UN mission have taken place. He continues fostering these contacts.

assistance activities in 2020, but progress was not possible due to the pandemic. Even if these initiatives have not resulted in any proven impact on the rights of people in the Democratic People's Republic of Korea, the Special Rapporteur believes that such engagement deserves attention, support and continuing development.

44. The standstill in reunions of separated families since August 2018 is lamentable, especially for aging family members. The Special Rapporteur urges both Koreas to fulfill their commitments made in the Panmunjom Declaration for Peace, Prosperity and Unification of the Korean Peninsula of 27 April 2018 – namely “to endeavor to swiftly resolve the humanitarian issues that resulted from the division of the nation, and to convene the Inter-Korean Red Cross meeting to discuss and resolve various issues including the reunion of separated families and relatives”<sup>53</sup>. According to the Republic of Korea, necessary equipment for virtual communications has already been set up. The Special Rapporteur does not see any reasons to further postpone virtual reunions.

45. The Special Rapporteur also wishes to again highlight the efforts of civil society organizations towards peace in the Korean Peninsula, especially Women Cross DMZ, that continue to campaign a global coalition of women's peace organizations calling to end the Korean War, to sign a peace agreement, and to include women in peace processes. The Special Rapporteur sent four letters to the Government during the reporting period in which he commended efforts to prevent a major outbreak of COVID-19 and encouraged the authorities to allow full and unimpeded access to medical and scientific experts and humanitarian actors. He also requested a visit to the country to discuss human rights issues, including the impact of sanctions on people's rights. He noted his support for peace initiatives and expressed condolences and solidarity to all the people who had been affected by a series of recent natural disasters. Although the Special Rapporteur has not received any response, he will continue to reach out to the Government of the Democratic People's Republic of Korea.

## VI. Conclusions

46. **Accountability of those most responsible for human rights violations in the Democratic People's Republic of Korea that may amount to crimes against humanity is imperative to pursue justice, to uphold the rights of victims, and to deter future violations of human rights in the country. To this end, both the Human Rights Council and the General Assembly have repeatedly encouraged the Security Council to take appropriate measures to ensure accountability, including through referral of the situation to the International Criminal Court and the adoption of sanctions targeting those who are most responsible for human rights violations,<sup>54</sup> without avail. For decades, people in the Democratic People's Republic of Korea have continued to suffer or fear grave abuses by State institutions that are supposed to protect them. The Security Council should also bear responsibility for its inaction against the continuation of crimes against humanity in the Democratic People's Republic of Korea. A rationale based on human rights demands that the fight against abuses of such a scale, gravity and nature cannot take a back seat to national or geopolitical interests. Failing to take action may be legal, but it is not justifiable under the UN Charter.**

47. **A referral to the International Criminal Court or the creation of an ad hoc tribunal or other comparable mechanism would be complementary to initiatives by victims who have sought justice in national courts, which efforts are limited in scope and hampered by the lack of cooperation from the Democratic People's Republic of Korea. Such approaches at the international level would stand to benefit from the groundwork being carried out by OHCHR, in particular with respect to information-gathering, documentation and awareness-raising.**

48. **The further isolation of the Democratic People's Republic of Korea with the outside world during the COVID-19 pandemic appears to exacerbate entrenched**

<sup>53</sup> A/72/109-S/2018/820, para. 1(5).

<sup>54</sup> A/RES/75/190 and A/HRC/RES/43/25.

human rights violations. The negative impact on the people is particularly worrying and when information received from within the country is further limited due to the decreased presence of the international community and the decreased number of escapees arriving in the Republic of Korea.

49. In this respect, the spirit of unity and cooperation emerging worldwide to address the challenge of COVID-19 s should reinvigorate the search for a peaceful end to the conflict on the Korean Peninsula. The United Nations should be coherent in pursuing peace, human rights, development and denuclearization in the Democratic People's Republic of Korea. The Special Rapporteur notes that prioritizing only the denuclearization agenda may negatively impact on other equally important agendas. On the contrary, a search for a peaceful and principled end of the war will generate the space and the conditions to further discuss denuclearization, human rights improvements, and access to the ground.

## VII. Recommendations

50. The Special Rapporteur recommends that the Democratic People's Republic of Korea:

- (a) Establish accountability mechanisms for human rights violations in the country in line with international human rights standards;
- (b) Acknowledge the existence of human rights violations including those raised by OHCHR, the commission of inquiry and the Special Rapporteur and provide human rights monitors and international humanitarian organizations with access to the country including detention facilities;
- (c) Address allegations of enforced disappearance, including in the form of abductions, and provide accurate information to the families of the victims on the fates and whereabouts of their missing relatives;
- (d) Initiate a process of dialogue with the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and invite him to visit the country.
- (e) Urgently invest the maximum available resources, including through international cooperation, to ensure that basic need for food, water and sanitation and housing are met, prioritizing the most marginalized communities;
- (f) Assess the impact of measures to prevent the spread of COVID-19 on the exercise of human rights, including economic and social rights, and revise any measures that violate these rights;
- (g) Grant full and unimpeded access to medical experts and humanitarian actors, relax restrictions on access to information, and provide timely and relevant data to the United Nations and humanitarian organizations to enable them to assist the most vulnerable communities;
- (h) Comply with the COVID-19 guidance issued by the United Nations High Commissioner for Human Rights, which calls for solidarity and cooperation to tackle the virus, and to mitigate the effects of measures designed to halt its spread;
- (i) Follow the guidelines in the UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings, abide by the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and consider the release of prisoners, particularly those in vulnerable situations;
- (j) Carry out research and release statistics and other data that will allow for an assessment to be made of the impact of international sanctions on the economic and social rights of the people;

(k) Recognize the fundamental right to leave and enter the country, both in law and in practice, and ensure that those who are repatriated are not subjected to punishment upon repatriation; and

(l) Engage with the Republic of Korea to restart reunions of separated families;

51. The Special Rapporteur recommends that the Republic of Korea:

(a) Integrate human rights into negotiations with the Democratic People's Republic of Korea;

(b) Engage with the Democratic People's Republic of Korea to realize the reunion of separated families;

(c) Engage with civil society organization with a view to enable victims, families, escapees and civil society organizations to continue their fight against impunity;

(d) Engage with civil society organizations to ensure access to Hanawon Resettlement Support Centers for North Korean Refugees in order to interview escapees receiving resettlement education.

(e) Continue its efforts to provide protection to people escaping from the Democratic People's Republic of Korea in third countries;

(f) Implement the North Korean Human Rights Act passed by the National Assembly of the Republic of Korea in 2016, including the establishment of the North Korean human rights foundation;

(g) Ensure that a human rights-based framework is integrated into possible economic and humanitarian cooperation with the Democratic People's Republic of Korea; and

(h) Facilitate people-to-people exchanges with the Democratic People's Republic of Korea by lowering limitations on freedom of communication.

52. The Special Rapporteur recommends that China:

(a) Apply the principle of non-refoulement to individuals from the Democratic People's Republic of Korea who are at risk of serious human rights violations upon repatriation;

(b) Actively engage in human rights issues in the Democratic People's Republic of Korea including by continuing to engage with the Special Rapporteur on the human rights in the Democratic People's Republic of Korea and with OHCHR.

53. The Special Rapporteur recommends that China, the Democratic People's Republic of Korea, the Republic of Korea and the United States of America, with the participation of other Member States of the United Nations as necessary, reach an agreement on peace and prosperity, including provisions to promote human rights and address human rights violations.

54. The Special Rapporteur recommends that the international community:

(a) Provide support to the people of the Democratic People's Republic of Korea in combating the COVID-19 pandemic;

(b) Provide increased financial and other support to humanitarian actors, including the United Nations, to enable them to respond to the most urgent humanitarian needs in the country and to support development initiatives;

(c) Use any available opportunity for dialogue with the Democratic People's Republic of Korea to create an environment to advance a peace agreement and seek progress in the human rights situation of the country;

(d) Continue to provide support to the efforts of civil society actors to address the situation of human rights in the Democratic People's Republic of Korea; and

(e) Support efforts to promote accountability in the Democratic People's Republic of Korea, including the work of OHCHR on accountability;

55. The Special Rapporteur makes following recommendations to the United Nations:

(a) The Security Council should refer the situation in the Democratic People's Republic of Korea to the International Criminal Court or establish an ad hoc tribunal or other comparable mechanism.

(b) The General Assembly should also discuss the establishment of an ad hoc international tribunal on crimes against humanity committed in the Democratic People's Republic of Korea

(c) The Security Council should adopt targeted sanctions against those who are most responsible for crimes against humanity;

(d) The Security Council should consider lifting sanctions that negatively affect people's human rights;

(e) The Secretary-General and OHCHR should conduct a comprehensive study of the detrimental impact of sanctions on the human rights of the people of the Democratic People's Republic of Korea and on the humanitarian situation in the context of the current COVID-19 preventative measures;

(f) The Secretary-General and OHCHR should continue to explore and support technical cooperation projects on human rights with the Democratic People's Republic of Korea; and

(g) OHCHR should organize an international conference on prisons in the Democratic People's Republic of Korea to develop comprehensive programs to improve the situation by opening access for monitoring and building national capacity;

56. The Special Rapporteur recommends that civil society organizations:

(a) Continue their efforts to promote accountability and their fight against impunity;

(b) Continue to monitor and document human rights violations in the Democratic People's Republic of Korea to support accountability efforts and to advocate for changes in the country's laws and policies; and

(c) Engage with the Members States of the United Nations to advocate for the advancement of a peace agreement and the integration of human rights into negotiations;